

Date 5/22/96

Surname [REDACTED]

APR 10 1996

Employer Identification Number: [REDACTED]
Key District: Southeast (Baltimore, MD)

Dear Applicant:

We have considered your application for recognition of exemption from federal income tax as an organization described in section 501(c)(6) of the Internal Revenue Code. We have determined that you do not qualify for exemption under that section of the Code. Our reasons for this conclusion and the facts upon which it is based are explained below.

The information submitted indicates that you were organized on [REDACTED], upon the acceptance of your Constitution and Bylaws by your membership. Your Constitution states that your purposes are (1) to provide marketing capabilities for mountain top area produce farmers to promote their products to the consumer directly by using the "[REDACTED]" trade name and management support, (2) to establish and maintain basic operating standards and representation for members that will inspire public confidence in the direct marketing concept, and (3) to provide members with publicity and other merchandising materials that will assist in promoting their product.

In your application, which you initially filed for recognition of exemption as an agricultural organization under section 501(c)(5) of the Code, you state that your purpose is to bring to the public fresh (picked the day of the sale or the night before the sale) vegetables and fruits, and that you organize places for the sale of these wares and promulgate rules to be followed to protect the consumers and the farmers that participate in these sales. You state that you participate in the W.I.C. program in the State of [REDACTED], and that you distribute literature to promote the sale of fresh vegetables to the public and give the public the time and location of the sales.

In your undated letter received by the Internal Revenue Service on [REDACTED], you enclosed a formal request for consideration under section 501(c)(6) of the Code. In that letter you also stated that you have no activities that you offer

[REDACTED]

to your members, except simply to give specific locations for producers to sell their merchandise and advertise these locations during the selling season (the second week in June through the second week in October). You stated that no dues are paid to you by your members, but that there is a stand fee for setting up at each market place and each market day. You stated that you have created an outlet for any producer that fits under your constitution and bylaws to join you and you give them specific locations to sell their goods. You stated specifically that you do not represent a whole community and that the following activities are not your function:

1. to better the conditions of those engaged in agricultural pursuits;
2. to improve the grade of products of those engaged in agriculture;
3. to develop a higher degree of efficiency in your members' occupations;
4. to sell the products of your members; or
5. to receive or collect commissions.

Section 501(c)(5) of the Code provides for the exemption from federal income tax of labor, agricultural, or horticultural organizations.

Section 1.501(c)(5)-1 of the Income Tax Regulations provides that agricultural organizations contemplated by section 501(c)(5) of the Code are those which have no net earnings inuring to the benefit of any member, and have as their objects the betterment of the conditions of those engaged in agriculture, the improvement of the grade of their products, and the development of a higher degree of efficiency in their agricultural occupations.

Section 501(c)(6) of the Code provides for the exemption from federal income tax of business leagues, chambers of commerce, real-estate boards, or boards of trade, not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(6)-1 of the Income Tax Regulations provides that a business league is an association of persons having some common business interest, the purpose of which is to promote such common interest and not to engage in a regular business of a kind ordinarily carried on for profit. It is an organization of the

same general class as a chamber of commerce or board of trade. Thus, its activities should be directed to the improvement of business conditions of one or more lines of business as distinguished from the performance of particular services for individual persons. An organization whose purpose is to engage in a regular business of a kind ordinarily carried on for profit, even though the business is conducted on a cooperative basis or produces only sufficient income to be self-sustaining, is not a business league.

Rev. Rul. 58-224, 1958-1 C.B. 242, holds that an organization which operates a trade show as its sole or principal activity primarily for the purpose of rendering particular services to individual persons is not entitled to exemption from federal income tax as an organization described as a business league in section 501(c)(6) of the Code. In this case, the general purpose of the organization is to promote the interest of trade and increase the facilities of commercial transactions, particularly in connection with the display, distribution, and sale of merchandise. However, the organization's sole activity consists of the staging of an annual merchandise show, primarily exhibits by manufacturers, under the sponsorship of the chamber of commerce. The revenue ruling concludes that the activities of the organization substantially serve the exhibitors and retailers as a convenience and economy in the conduct of their businesses by providing selling opportunities for the distributors, and that therefore the organization is rendering particular services for individual persons as distinguished from the improvement of business conditions generally.

Rev. Rul. 66-105, 1966-1 C.B. 145, holds that a nonprofit agricultural corporation whose principal activity is marketing livestock as agent for its members does not qualify for exemption from federal income tax under section 501(c)(5) of the Code.

Rev. Rul. 68-264, 1968-1 C.B. 264, defines a particular service for the purposes of section 501(c)(6) of the Code as including an activity that serves as a convenience or economy to the members of the organization in the operation of their businesses.

Rev. Rul. 73-411, 1973-2 C.B. 180, states that in the case of a chamber of commerce or similar organization, the common business interest is usually the general economic welfare of a community. Membership is voluntary and open generally to all business and professional men and women in the community. The revenue ruling also defines trade associations or business leagues as similar to chambers of commerce or boards of trade, except that they serve only the common business interests of the

members of a single line of business or of the members of closely related lines of business within a single industry. The revenue ruling further states that it has been established as a matter of statutory construction that in employing popular names in describing many of the organizations exempted under Subchapter F of the Code, such as "labor organizations," "chambers of commerce," and others, Congress is presumed to have had reference to organizations as they actually exist and are commonly known. This means that where the requisite characteristics of the organizations exempted by such terms are not otherwise fixed by regulations or statute, the Service is required to look to the characteristics of such organizations as they have commonly come to be known in actuality. It means also that successful applicants for exemption must be shown to possess at least the essential characteristics of the class of organizations commonly known by such names.

Rev. Rul. 77-153, 1977-1 C.B. 147, holds that a nonprofit organization that owns and operates a livestock facility and leases it to local members of a nonexempt national association of farmers for use in implementing the associations's collective bargaining program with processors does not qualify for exemption as an agricultural organization.

Based on the statutory construction of section 501(c)(6) of the Code, it is a well established principle that section 501(c)(6) is intended to apply only to membership organizations which further the common business interests of their members and which are financed, at least in part, through membership dues. The legislative history of the statute, and the rules of statutory construction applicable to that section of the Code dealing with exempt organizations, provide that only membership organizations supported by membership dues or assessments are included in the term of the exemption under section 501(c)(6). Thus, an organization which is not in fact membership supported lacks the most significant characteristic common to organizations for which exemption was provided under section 501(c)(6). Since your financial support derives from stand fees, which fees would be paid only if a stand was to be used in a particular place on a particular day, and you state that you receive no dues from your members, you have no ongoing financial support from your members except their payments for services rendered by you directly to them. Accordingly, as explained in Rev. Rul. 73-411, supra, you have not demonstrated a pattern of membership support and thus fail a critical test of exemption under section 501(c)(6).

The information you have submitted indicates that you were primarily established to provide a place where your members could sell their produce, and your primary activity is the provision of

[REDACTED]

a specific location for producers to sell their produce directly to the general public. This activity is very similar to the activity of the organization described in Rev. Rul. 58-224, supra, even though that organization held only one annual merchandise show. For the same reason that organization was determined to be substantially serving the retailers and exhibitors as a convenience and economy in the conduct of their businesses, you are providing your members with a convenience and economy in the conduct of their businesses, the sale of produce. This activity, in and of itself, does not improve the business conditions of one or more lines of business

In addition, such activity provides your members with a convenience or economy in the operation of their own businesses. As stated in Rev. Rul. 68-264, supra, such an activity is defined as a particular service. By primarily performing this activity, you are primarily engaged in an activity proscribed under section 1.501(c)(6)-1 of the regulations, and thus you are not entitled to exemption under section 501(c)(6) of the Code.

With regard to section 501(c)(5) of the Code, your activities appear to be substantially similar to the organizations described in Rev. Ruls. 66-105 and 77-153, both supra, both denied status under section 501(c)(5). Further, you have stated that it is neither your objective nor your function to better the conditions of those engaged in agricultural pursuits, to improve the grade of products of those engaged in agriculture, or to develop a higher degree of efficiency in your members' occupations (agriculture). Inasmuch as these three objectives are precisely mentioned in section 1.501(c)(5)-1 of the regulations as those embodied by organizations contemplated under section 501(c)(5), you are not described in that section.

For these reasons, we conclude that you do not qualify for recognition of exemption from federal income tax under section 501(c)(6) of the Code or under section 501(c)(5). You are required to file federal income tax returns.

You have the right to protest this ruling if you believe that it is incorrect. To protest, you should submit a statement of your views, with a full explanation of your reasoning. This statement must be submitted within 30 days of the date of this letter and must be signed by one of your officers. You also have a right to a conference in this office after your protest statement is submitted. If you want a conference, you must request it when you file your protest statement. If you are to be represented by someone who is not one of your officers, he/she must file a proper power of attorney and otherwise qualify under our Conference and Practice Requirements.

[REDACTED]

If we do not hear from you within 30 days, this ruling will become final and copies of it will be forwarded to your key District Director. Thereafter, any questions about your federal income tax status should be addressed to your key District Director.

When sending additional letters with respect to this case to the Internal Revenue Service, you will expedite their receipt by placing the following address on the envelope:

Internal Revenue Service
[REDACTED]
1111 Constitution Avenue, N.W.
Washington, D.C. 20224

Sincerely yours,

(signed) [REDACTED]

[REDACTED]
Chief, Exempt Organizations
Rulings Branch 5

cc: Key DD, Southeast Region
Attn: EO Group

[REDACTED]

4-5-96

[REDACTED]

4-8-96